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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:)	
)	Chapter 11
)	
NORTHWEST SENIOR HOUSING)	Case No. 22-30659 (MVL)
CORPORATION, <i>et al.</i> ¹)	
)	(Joint Administration Requested)
Debtors.)	
)	

**INTERCITY INVESTMENT PROPERTIES, INC.’S SUPPLEMENT TO OBJECTION
TO: (I) TRUSTEE AND DIP LENDER’S MOTION FOR ENTRY OF AN ORDER
AUTHORIZING AND APPROVING THE STALKING HORSE ASSET PURCHASE
AGREEMENT; AND (II) FOURTH AMENDED PLAN OF REORGANIZATION OF
THE PLAN SPONSORS DATED FEBRUARY 17, 2023**

Intercity Investment Properties, Inc. (“Landlord”) files this Supplemental Objection (the “Supplemental Objection”) to: (a) the *Motion of Trustee and DIP Lender for Entry of an Order (I) Authorizing and Approving the Bidding Procedures; (II) Authorizing and Approving the Stalking Horse Asset Purchase Agreement; (III) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (IV) Scheduling Combined Confirmation and Sale Hearing; and (V) Granting Related Relief* (the “Sale Motion”) [Dkt. 755] and (b) the *Fourth*

¹ The Debtors in these chapter 11 cases, (the “Bankruptcy”) along with the last four digits of each Debtor’s federal tax identification number, are Northwest Senior Housing Corporation (1278) (the “Edgemere”) and Senior Quality Lifestyles Corporation (2669) (“SQLC”). The Debtors’ mailing address is 8523 Thackery Street, Dallas, Texas 75225.



Amended Plan of Reorganization of the Plan Sponsors Dated February 17, 2023 (the “Fourth Plan”) [Dkt. 1241]. In support of its Supplemental Objection, the Landlord states as follows:

SUPPLEMENT TO OBJECTION

1. On February 14, 2023, Landlord filed its Objection² to the: (a) *Motion of Trustee and DIP Lender for Entry of an Order (I) Authorizing and Approving the Bidding Procedures; (II) Authorizing and Approving the Stalking Horse Asset Purchase Agreement; (III) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (IV) Scheduling Combined Confirmation and Sale Hearing; and (V) Granting Related Relief* (the “Sale Motion”) [Dkt. 755] and (b) *Third Amended Plan of Reorganization of the Plan Sponsors Dated December 19, 2022* (the “Third Plan”) [Dkt. 933].

2. Since the filing of the Objection, the Plan Sponsors filed their Fourth Plan and their *Brief in Support of Plan Confirmation and Omnibus Reply to Objections* (the “Confirmation Brief”) [Dkt. 1247]. The Fourth Plan, the Confirmation Brief, and Nick Harshfield’s testimony at the adequate assurance hearing, create significant and concerning ambiguities as to whether Lifespace will make the Lifespace Initial Settlement Payment (over \$68 million) on the Effective Date, as clearly disclosed in the Disclosure Statement and required by the Third Plan.

3. One of the major features of the Settlement and Contribution Agreement (the “Settlement Agreement”) is the creation and funding of a resident trust over a period of eighteen (18) years, from which current residents can access and use funds as a subsidy for certain increased costs of care under the go-forward rental model. If Lifespace does not or cannot make the Lifespace Initial Settlement Payment on the Effective Date, Lifespace will nonetheless be granted a full and

² Capitalized terms used but not defined herein shall have the meaning set forth in the Objection, Fourth Plan or Sale Motion, as the case may be.

complete release on the Effective Date. The residents will have received no consideration in exchange for the release they will have provided. Further, if no payments are made under the Settlement Agreement, then the rent subsidy funds will not be available, the refunds will not be repaid, and the residents may leave the Edgemere. If occupancy declines or rent is otherwise unpaid, it makes it even more likely that Purchaser will not be able to make the required rent payments under the Lease, nor perform its other obligations under the Lease (such as maintaining the Premises in in good and safe repair, order and condition).

4. Specifically, paragraph 99 of the Confirmation Brief states as follows:

The Landlord incorrectly conflates feasibility of the Lifespace Settlement with feasibility of the Plan. ***None of the contributions required under the Lifespace Settlement are required for the Sale Transaction to close or the Plan to go effective.*** In the unlikely event that Lifespace were to default under the Lifespace Settlement, it would not result in the liquidation or further reorganization of the Debtors, which is the feasibility requirement under section 1129(a)(11). Instead, the Residents Trust would have the right to enforce the Lifespace Settlement against Lifespace. The Lifespace Settlement, between Lifespace and the Residents Trust, is independent of the future operations of Edgemere. Thus, the Lifespace Settlement does not implicate feasibility under Bankruptcy Code section 1129(a)(11). (emphasis added)

5. Paragraph 99 of the Confirmation Brief directly contradicts language in (i) the Third Plan and the Disclosure Statement (the version that former residents (Class 5) and current residents (Class 6) were asked to and vote on).

6. The following provisions of the Third Plan unambiguously require Lifespace to make the Lifespace Initial Settlement Payment on the Effective Date:

(a) Section 1.89 provides as follows: “*Lifespace Resident Contribution Schedule*” means the schedule of Lifespace Resident Contributions attached to the Disclosure Statement as Exhibit 4;

(b) Section 1.90 provides as follows: “*Lifespace Resident Contributions*” means the annual payments that will be made by Lifespace into the Residents Trust, subject to certain financial conditions, pursuant to the terms of the Lifespace Settlement and Contribution

Agreement, in substantially the form attached to the Disclosure Statement as Exhibit 3, and the Lifespace Resident Contribution Schedule, attached to the Disclosure Statement as Exhibit 4;

(c) The Lifespace Resident Contribution Schedule, attached to the Disclosure Statement as Exhibit 4, provides that \$52,460,094 is the “**Effective Date Payment**” to be made by Lifespace to the Residents Trust” (emphasis added);

(d) Section 1.87 provides as follows: “*Lifespace Bond Contribution*” means the \$16.5 million payment to the Trustee **on the Effective Date** for Distribution to holders of the Original Bonds” (emphasis added); and

(e) Section 9.2(e) provides that it “**shall be a condition precedent to the Effective Date** that each of the following provisions, terms, and conditions shall have been satisfied or waived pursuant to the provisions of this Plan: ... (e) All payments and transfers to be made on the Effective Date shall be made or duly provided for[.]” (emphasis added).

7. Adding to the confusion was Mr. Harshfield’s testimony at the adequate assurance hearing:

BY MR. GOLD:

Q Is it your understanding that the funding of the trust is a condition to the effectiveness of the plan?

MR. WALKER: Objection, Your Honor. Sorry. I didn’t mean to interrupt.

MR. GOLD: Go ahead.

MR. WALKER: Object. Calls for a legal conclusion. And again, I don’t understand the relevancy to the adequate assurance --

MR. GOLD: I prefaced it with his understanding. And I’ll get there.

THE COURT: You’re going to get me to adequate assurance based on the effective date or the effectiveness --

MR. GOLD: Yes.

THE COURT: -- of the plan?

MR. GOLD: Yes.

MR. WALKER: Same objection.

THE COURT: A little tiny piece of rope here.

MR. GOLD: Okay.

BY MR. GOLD: Q Do you understand my question?

A It sounds like a legal question, but --

Q No. What is your understanding? How does it work?

A My understanding is it’s two separate matters.

See February 23, 2023 Transcript of Proceedings at 226:21-227:19 (emphasis added).

8. At 12:49 pm on March 3, 2023, the Plan Sponsors finally filed the amended plan exhibits promised by the Fourth Plan. While an amended Settlement Agreement was included,

there was no amended contribution schedule attached, which indicates that the existing Exhibit 4 to the Disclosure Statement (requiring funding of the Lifespace Initial Settlement Payment on the Effective Date) remains operative. Thus, these amended exhibits fail to provide clarity on the ambiguity.

9. Nobody can predict what the residents' reaction will be if the Lifespace Initial Settlement Payment is not made, as previously promised, on the Effective Date. Will they stop paying rent in protest, impairing Purchaser's ability to make rent payments under the Lease? Will they simply leave the Edgemere, wreaking havoc on the Purchaser's occupancy projections,³ also impairing Purchaser's ability to make rent payments under the Lease?

10. Leaving aside whether Lifespace Resident Contribution Schedule can be amended to delay the Effective Date Payment without resoliciting the holders of Class 5 and Class 6 Claims (the Effective Date Payment is 36.58% of the total funds due to the Resident Trust), all parties in interest (and this Court) must have clarity on what conditions exist for the Effective Date to occur.⁴

³ Notably, the existence of the Settlement Agreement and the LifeSpace Initial Settlement Payment factored into the Long Hill projections.

⁴ If Lifespace Initial Settlement Payment is not made on the Effective Date, the question must be asked whether Lifespace is entitled to a release or exculpation under the Fourth Plan due to lack of consideration. *See In re CJ Holding Co.*, 597 B.R. 597, 609 (S.D. Tex. 2019) (an individual consents to a third-party release if the party (1) votes in favor of the plan and (2) *receives consideration in exchange for the release*); *In re Wool Growers Cent. Storage Co.*, 371 B.R. 768, 776 (Bankr. N.D. Tex. 2007) (consensual nondebtor releases that are specific in language, integral to the plan, a condition of the settlement, and *given for consideration* do not violate section 524(e).” (emphasis added). Is a release consensual if the terms of the settlement upon which the vote was predicated are materially modified to the detriment of the one of the settling parties without re-solicitation? Regardless, a release cannot be approved if there is no consideration. *See In re Prussia Assocs.*, 322 B.R. 572, 599 (Bankr. E.D. Pa. 2005) (“[T]here is no evidence in the record that the injunction was given in exchange for any ‘consideration,’ let alone ‘fair consideration’”); *In re Exide Techs.*, 303 B.R. 48, 76 (Bankr. D. Del. 2003) (noting that, with respect to exculpation, “there is no evidence that any value has been given to creditors or equity holders in exchange for the Subordination Injunction or that the Subordination. Injunction is necessary for the Plan's success”); *In re Bos. Harbor Marina Co.*, 157 B.R. 726, 732 (Bankr. D. Mass. 1993) (noting that, “[t]he parties who would benefit by the release and injunction are contributing nothing to the Plan”). Until Lifespace makes the Lifespace Initial Settlement Payment, there is no consideration for releasing Lifespace under the Fourth Plan.

Without such clarity, the Fourth Plan cannot be confirmed.⁵

RESERVATION OF RIGHTS

11. Nothing contained in this Supplement to Objection shall constitute a waiver of any rights or remedies of the Landlord under the Bankruptcy Code, the Lease, or applicable law, including, without limitation, the right to: (i) amend, supplement, or otherwise modify this Supplement and/or the Objection; (ii) to account for any after-acquired information; or (iii) to be heard at any hearing on the Plan and Sale Motion, on any issue.

WHEREFORE, the Landlord respectfully requests the entry of an order denying the Plan and Sale Motion as set forth herein and granting such other and further relief as the Court deems appropriate.

⁵ Section 4.6 was added to the Fourth Plan to convert the Plan into a liquidating plan. Consequently, the Plan cannot be confirmed unless section 8.5 (discharge of claims) is deleted in its entirety. *See* 11 U.S.C § 1141(d)(3).

Dallas, Texas
March 3, 2023

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/s/ Elizabeth B. Vandesteeg

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CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2023, a true and correct copy of the foregoing was served electronically on all persons via the Court's CM/ECF system.

/s/ Michael S. Held

Michael S. Held